



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement (PSA) for Cal/OSHA Required Service on Vehicles with Altec Industries, Inc. of Dixon, California for a Five Year Term with Administration by the Electric Utility Director (Not to Exceed \$25,000 Annually)

**MEETING DATE:** May 18, 2011

**PREPARED BY:** Electric Utility Director

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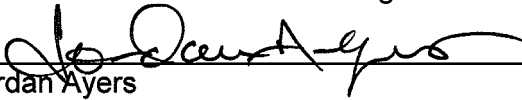
**RECOMMENDED ACTION:** Adopt resolution authorizing City Manager to execute professional services agreement (PSA) for Cal/OSHA required service on vehicles with Altec Industries, Inc. of Dixon, California for a five year term with administration by the Electric Utility Director (not to exceed \$25,000 annually).

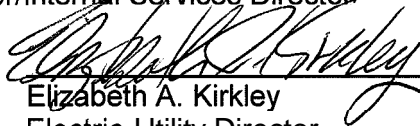
**BACKGROUND INFORMATION:** EUD lift trucks and digger derricks were purchased from Altec Industries, Inc. Cal/OSHA requires annual inspections and certifications for this equipment that is beyond the expertise of the City's fleet services division. Altec Industries, Inc. employs fully trained and certified technicians to perform this work. The attached PSA includes a service price page outlining their services and rates. These services are essential for Cal/OSHA compliance, the safety of EUD personnel and to ensure this essential equipment is operational to prevent extended loss of electrical service.

The Fleet Services Division of the Public Works Department currently performs basic maintenance on EUD vehicles and relies on Altec Industries, Inc. as the authorized dealer for parts, materials and services outside of their expertise or licensing. Therefore, staff recommends execution of a PSA with Altec Industries, Inc. to perform the Cal/OSHA required service on the Altec equipment.

**FISCAL IMPACT:** None

**FUNDING:** Included in the FY 2010/11 Budget Account No. 160601.7333

  
Jordan Ayers  
Deputy City Manager/Internal Services Director

  
Elizabeth A. Kirkley  
Electric Utility Director

**PREPARED BY:** Kevin Bell, Electric Rate Analyst  
EAK/KB/lst

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**APPROVED:**

  
Konrad Bartlam, City Manager

# **AGREEMENT FOR PROFESSIONAL SERVICES**

## **ARTICLE 1**

### **PARTIES AND PURPOSE**

#### **Section 1.1 Parties**

THIS AGREEMENT is entered into on July 1, 2011, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and Altec Industries, Inc. (hereinafter "CONTRACTOR").

#### **Section 1.2 Purposes**

CITY selected the CONTRACTOR to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference. CITY wishes to enter into an agreement with CONTRACTOR for Inspections, Certifications, Repairs, Retrofits and Parts Supply for City of Lodi Electric Utility vehicles and equipment. May include work at the City facilities and/or in Dixon, and may include transporting of City Electric Utility vehicles and equipment to and from those facilities" (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

## **ARTICLE 2**

### **SCOPE OF SERVICES**

#### **Section 2.1 Scope of Services**

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

#### **Section 2.2 Time For Commencement and Completion of Work**

CONTRACTOR shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONTRACTOR shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall remain in contact with reviewing agencies and make all efforts to review and return all comments.

### **Section 2.3 Meetings**

CONTRACTOR shall attend meetings as may be set forth in the Scope of Services.

### **Section 2.4 Staffing**

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONTRACTOR of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONTRACTOR of any changes of CONTRACTORs project staff prior to any change.

CONTRACTOR represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONTRACTOR represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

### **Section 2.5 Subcontracts**

Unless prior written approval of CITY is obtained, CONTRACTOR shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

## **ARTICLE 3**

### **COMPENSATION**

### **Section 3.1 Compensation**

CONTRACTORs compensation for all work under this Agreement shall conform to the provisions of the Service Price Page, attached hereto as Exhibit B and incorporated by this reference.

CONTRACTOR shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

### **Section 3.2 Method of Payment**

CONTRACTOR shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual

performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONTRACTORs compensation for all work under this Agreement shall not exceed the amount of the Service Price Page.

### **Section 3.3 Costs**

The Service Price Page shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

### **Section 3.4 Auditing**

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Agreement. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

## **ARTICLE 4**

### **MISCELLANEOUS PROVISIONS**

#### **Section 4.1 Nondiscrimination**

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any sub CONTRACTOR on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

#### **Section 4.2 ADA Compliance**

In performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

### **Section 4.3 Indemnification and Responsibility for Damage**

Contractor shall, to the fullest extent permitted by law, defend, indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and consultants from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of the negligence of the Contractor or any subcontractor or any person or entity employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or employees.

### **Section 4.4 No Personal Liability**

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally liable for any liability arising under this Agreement.

### **Section 4.5 Responsibility of CITY**

CITY shall not be held responsible for the care or protection of any materials or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

### **Section 4.6 Insurance Requirements for CONTRACTOR**

Contractor shall take out and maintain in the life of the project the minimum insurance coverage as set forth in Exhibit C attached hereto and incorporated by reference into this Agreement.

### **Section 4.7 Successors and Assigns**

CITY and CONTRACTOR shall not assign their respective obligations under this Agreement without the written consent of the other.

Contractor shall not subcontract any part of the work without the prior written consent of CITY. Any subcontract shall be the sole responsibility of CITY.

### **Section 4.8 Notices**

Any notice required to be given by the City of Lodi shall be in writing and shall be given by an authorized representative of the sender and shall be deemed to have been given if the same is personally served or upon receipt by registered mail or overnight express postage paid or three business days after the time of mailing if sent by first class or certified mail, postage paid, or by electronic mail as follows:

City of Lodi  
221 West Pine Street  
Lodi, CA 95240-3006

Lodi CA 95240-3006

To CONTRACTOR: Altec Industries, Inc  
325 Industrial Wy  
Dixon, CA 95620

**Section 4.09 Cooperation of CITY**

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

**Section 4.10 CONTRACTOR is Not an Employee of CITY**

CONTRACTOR agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONTRACTOR meet specific standards without regard to the manner and means of accomplishment thereof.

**Section 4.11 Termination**

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

**Section 4.12 Confidentiality**

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by CONTRACTOR as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

**Section 4.13 Applicable Law, Jurisdiction, Severability and Attorney's Fees**

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this

Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

**Section 4.14 City Business License Requirement**

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

**Section 4.15 Captions**

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

**Section 4.16 Integration and Modification**

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

**Section 4.17 Contract Terms Prevail**

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

**Section 4.18 Severability**

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**Section 4.19 Ownership of Documents**

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

**Section 4.20 Authority**

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

**TERM AND TERMS:** The term of this Contract Agreement shall be for a period of five (5) years, commencing July 1, 2011 and terminating June 30, 2016. The Contract may be extended by mutual agreement of the parties, and with City Council approval, for an additional term as specified. All other terms and conditions will remain as set forth in the attached agreement hereto as Exhibit A and made a part hereof as though fully set forth herein.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

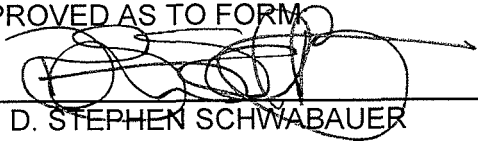
CITY OF LODI, a municipal corporation

ATTEST:

By \_\_\_\_\_  
RANDI JOHL  
CITY CLERK

By \_\_\_\_\_  
KONRADT BARTLAM  
CITY MANAGER

APPROVED AS TO FORM

By  \_\_\_\_\_  
D. STEPHEN SCHWABAUER  
City Attorney

CONTRACTOR:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attachments:

Exhibit A – Scope of Services

Exhibit B – Service Price Page

Exhibit C – Insurance Requirements





## **Exhibit A**

### **SCOPE OF SERVICES**

For Inspections, Certifications, Repairs and Retrofits, and Parts Supply for City of Lodi Altec vehicles and equipment per the inspection and labor rate sheet (Exhibit B). Costs can be increased annually by percentage of CPI-SAN FRANCISCO.

Parts and labor to be negotiated per task(s) and/or work estimate.

May include work at City facilities and/or Dixon, and may include transporting of vehicles and equipment to and from those facilities.

Not to exceed \$25,000 annually.



## Exhibit B

### Altec Industries Service Price Page City of Lodi, CA

#### Rates for In Shop and Road Service

Service	Category	Price
Annual Inspection	Small Aerial Insulated	\$350.00
	Large Aerial Insulated	\$520.00
	Digger Derrick	\$750.00
Load Test	All units	\$100.00
Chassis, 90 day DOT	All units	\$100.00
Transportation	To or from Lodi to Dixon	\$150.00
Dielectric test	Insulated Booms	
	*Boom/liner/iso-grip	\$255.00
	Boom/Iso-Grip	\$150.00
	Liner	\$100.00
Repairs (in shop rate)	Hourly	\$100.00
Repairs (road rate)	Hourly	\$108.00

Dielectric test for Boom/liner/iso-grip with an annual inspection is \$150.00



## Exhibit C

**Insurance Requirements for Contractor** The Contractor shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Contractor and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Contractor's operations under this contract, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

- |   |   |
|---|---|
| 1. <u>COMPREHENSIVE GENERAL LIABILITY</u>               | 2. <u>COMPREHENSIVE AUTOMOBILE LIABILITY</u>  |
| \$1,000,000 Bodily Injury -<br>Ea. Occurrence/Aggregate | \$500,000 Bodily Injury - Ea. Person<br>\$500,000 Bodily Injury - Ea. Occurrence        |
| \$2,000,000 Property Damage<br>Ea. Occurrence/Aggregate | \$500,000 Property Damage - Ea. Occurrence  |
| \$2,000,000 Combined Single Limits                      | \$1,000,000 Combined Single Limits  |
|   | 3. <u>GARAGE LIABILITY</u>  |
|   | \$1,000,000 Auto Only - Ea. Accident<br>\$1,000,000 Other than Auto Only - Ea. Accident |

NOTE: Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

- (a) Additional Named Insured Endorsement  
Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, **Officers, Agents, Volunteers and Employees** as additional named insureds.  
  
(This endorsement shall be on a form furnished to the City and shall be included with Contractor's policies.)
- (b) Primary Insurance Endorsement  
Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi ~~or~~ its **officers** and employees shall be excess only and not contributing **with** the insurance afforded by this endorsement.
- (c) Severability of interest Clause  
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.
- (d) Notice of Cancellation or Change in Coverage Endorsement  
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

**Compensation Insurance** The Contractor shall take out and maintain during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees **are** covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

RESOLUTION NO. 2011-72

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING  
THE CITY MANAGER TO EXECUTE A PROFESSIONAL  
SERVICES AGREEMENT FOR CAL/OSHA REQUIRED ANNUAL  
INSPECTIONS, CERTIFICATIONS, REPAIRS, AND PURCHASE OF  
MATERIALS TO MAINTAIN THE ELECTRIC UTILITY  
DEPARTMENT LIFT TRUCKS AND DIGGER DERRICKS WITH  
ALTEC INDUSTRIES, INC., OF DIXON, CALIFORNIA, WITH  
ADMINISTRATION BY THE ELECTRIC UTILITY DIRECTOR

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WHEREAS, Electric Utility Department lift trucks and digger derricks have been purchased from Altec Industries, Inc.; and

WHEREAS, Cal/OSHA requires annual inspections and certifications for this equipment; and

WHEREAS, Altec Industries, Inc. employs fully trained and certified technicians to perform this work; and

WHEREAS, these services are essential for Cal/OSHA compliance, the safety of Electric Utility Department (EUD) personnel, and to ensure this essential equipment is operational to prevent extended loss of electrical service; and

WHEREAS, the Fleet Services Division of the Public Works Department currently maintains EUD vehicles and relies on Altec Industries, Inc. as the authorized dealer for parts, materials, and services outside their expertise or licensing; and

WHEREAS, staff recommends execution of a Professional Services Agreement with Altec Industries, Inc. to maintain the Altec EUD equipment.

NOW THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Professional Services Agreement, with administration by the Electric Utility Director, for Cal/OSHA required annual inspections, certifications, repairs, and purchase of materials to maintain the Electric Utility Department lift trucks and digger derricks to Altec Industries, Inc., of Dixon, California, for a five-year term in an amount not to exceed \$25,000 annually.

Dated: May 18, 2011

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I hereby certify that Resolution No. 2011-72 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 18, 2011, by the following vote:

AYES: COUNCIL MEMBERS - Hansen, Katzakian, Nakanishi, and  
Mayor Johnson

NOES: COUNCIL MEMBERS - None

ABSENT: COUNCIL MEMBERS - Mounce

ABSTAIN: COUNCIL MEMBERS - None

  
RANDI IOHI  
City Clerk